

REMARKS/ARGUMENTS

With entry of the present Amendment, claims 1, 3, 5-9, 13-15 and 17-20 are pending in the above-identified application. Non-elected claims 11, 12 and 16 have been canceled. Claim 2 has been canceled and the subject matter thereof placed into claim 1; claim 3 has been renumbered to depend from claim 1 rather than claim 2. Claim 4 has been canceled and the subject matter thereof placed into new claim 17, following the format of amended claim 1. Claim 10 has been canceled. Claims 7-9, 14 and 15 have been amended to refer to "peptone digest complexed with an ionic metal" rather than "ionic metal-peptide complex." New claims 18-20 depend from claim 17 and are parallel in format to claims 5, 6 and 8.

No new matter is added by the present amendments and new claims, as pointed out above. Applicant reserves the right to prosecute the subject matter of the canceled claims in a divisional or related application.

Rejections under 35 U.S.C. §112

Claims 1-6 and 13-15 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The objection to the phrase "ionic-peptide complex" in claim 1 has been obviated by the amendment of the claim to more clearly recite the formation of complex between peptone digests and the ionic metal, as noted above.

The rejection of all other claims was on the basis that they depended directly or indirectly from the rejected claim 1 and thus were also subject to rejection.

Double Patenting

Claims 1-10 and 13-15 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,382,431 (the '431 patent) in view of claims 1 and 3-7 of U.S. Patent No. 5,888,522 (the '522

patent). Although the examiner acknowledged that the conflicting claims were not identical, they were regarded by the examiner as not patentably distinct from the instant claims. Applicant respectfully traverses.

The treatment of skin blemishes, such as scars (claim 1), skin tags, calluses, benign skin moles, stretch marks, facial keratosis, thickened sunspots of the skin, or vitiligo spots (claim 17) is regarded to involve different factors from the treatments of topical wounds, oxidative damage, and the like mentioned in the '431 and '522 patents and the claims thereof. For example, topical wounds involve broken skin, where the layers of the skin have been breached and the therapeutic approach involves one of stopping bleeding, inflammation, and facilitating wound closure to permit the underlying skin to heal. The same approach applies to skin having oxidative damage, where dressings permit the healing process to occur. In either case, scar formation often results.

The treatment of skin blemishes, however, has taken a very different approach from the healing process described above. For example, blemishes such as scars and skin tags, calluses, benign moles and the like are typically treated by physical approaches, such as scar subcision, laser ablation, surgical removal, deep chemical peels, dermabrasion, etc. These approaches are often poorly effective, expensive, can be painful, and may even produce further scarring.

The present invention accelerates remodeling of skin without the necessity for such "chemical peels." Likewise, biochemicals that activate systems that increase skin breakdown and resynthesis, such as retinol and retinoic acid, can also be avoided. Other approaches to accelerate skin remodeling include skin regeneration accelerators that enhance the skin's production of collagen and elastin. None of these approaches suggests the presently claimed invention and its advantages.

In view of the differences between the instantly claimed invention and that which is disclosed and claimed in the '431 and '522 patents, reconsideration and withdrawal of this basis of rejection is respectfully requested.

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CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance is respectfully requested. If the Examiner believes a telephone conference would facilitate prosecution of this application, please telephone the undersigned at 206-467-9600.

Respectfully submitted,

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By: Steven W. Parmelee
Steven W. Parmelee
Reg. No. 31,990

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 206-467-9600
Fax: 415-576-0300
Attachments
SWP/acg
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